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Federal Maritime Commission
800 N. Capitol Street NW, Room 1046
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April 2, 2012

Kobel v Hapag-Lloyd

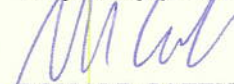
Attention: Ms. Gregory

FMC Docket # 10-06

Dear Ms. Gregory:

Enclosed please find an original and 4 copies of Respondent Limco's reply to Complainants exceptions in the above matter. Thank you for your cooperation in this case.

Very truly yours,



RONALD SAFFNER

FEDERAL MARITIME COMMISSION

YAKOV KOBEL AND VICTOR BERKOVICH

Docket No. 10-06

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

V.

**REPLY TO COMPLAINANTS
OBJECTIONS ON BEHALF OF
LIMCO LOGISTICS INC.**

HAPAG-LLOYD A.G., HAPAG-LLOYD
AMERICA, INC., LIMCO LOGISTICS INC.,
INTERNATIONAL TLC, INC.

POINT ONE: JURISDICTION

Respondents Hapag-Lloyd and Limco Logistics have previously raised the issue that the Federal Maritime Commission does not have subject matter jurisdiction to adjudicate Complainants claims herein. Respondents have repeatedly asserted that the Complainants causes of action are actually COGSA claims for damage or loss to cargo, which can only be adjudicated in Federal Court. The Complainants attorneys' characterization of his claim as being a Shipping Act violation, is not determinative. Respondent Limco joins in the legal argument of Hapag-Lloyd at paragraph IV(4) of their memorandum in response to Complainants exceptions. The Complainant's entire case should be dismissed for lack of subject matter jurisdiction

POINT TWO: CREDIBILITY

Complainants have the burden of proof to show by a preponderance of evidence that the Respondents violated the provision of the Shipping Act. The

Administrative Law Judge, the Honorable Judith Wirth, conducted a week long trial and heard the direct testimony and the cross examination of the numerous witnesses from all of the parties. In addition, the Judge had to thoroughly review and analysis the voluminous exhibits and documents submitted. The Presiding Officers findings of fact are wholly consistent with the reliable and probative evidence presented. In addition, the Judges conclusions of law are well grounded by the undisputed facts. Based on the facts presented at trial, and applying the law to those facts, the Presiding Officer properly dismissed with prejudice Complainants action with prejudice.

In reviewing the Initial Decision of the Presiding Judge, the Federal Maritime Commission must give great weight to that initial decision. The trial judge made her ruling after reviewing not only the documentary evidence, but also by assessing the credibility and reliability of the witnesses at trial. The Federal Maritime Commission, sitting in essence as an appellate court, can only review the record from the prior proceeding. It does not have the opportunity to assess the credibility of the witnesses at trial. Accordingly, the trial judges assessment of credibility must be given great weight.

The Administrative Law Judge's legal analysis (page 21 of the Initial decision) is that the testimony of the complainant Yakov Kobel was "evasive, argumentative and not credible". Great deference must be made to the significant finding of the Administrative Law Judge who heard the testimony and cross-examination of Mr. Kobel. Judge Wirth was able to observe all of the witness's manors and demeanor. Such observation cannot be seen in a trial transcript.

Significantly, the Administrative Law Judge does not cite the witnesses for International TLC, Hapag-Lloyd and Limco Logistics as being anything but forthright, direct and credible.

The one specific example cited by Judge Worth as to the unreliability of Mr. Kobel's testimony was that on January 9, 2009 he received a letter advising of the imminent sale of the cargo, but "he ignored it because it was an incorrect letter." That is really an example of Mr. Kobel being argumentative and evasive.

There are additional and better examples of Mr. Kobel's total lack of credibility and trustworthiness. At his deposition, Mr. Kobel initially denied ever filing a bankruptcy petition. However, when confronted with documentary evidence to the contrary, he changed his testimony to say that in fact he had filed three separate bankruptcy petitions. His initial testimony was therefore an out and out lie as he wanted to hide that fact that his financial difficulties may have adversely affected the subject shipment.

Judge Wirth also noted that Mr. Kobel had a tendency to exaggerate the facts of his case. See finding of fact 62 concerning Mr. Kobel inflating of his initial claim for damage to his container. In essence, Mr. Kobel sought damages which far exceeded the entire value of his ocean container.

The best example of the bizarre, incredible and unreliable nature of Mr. Kobel's testimony was that Mr. Kobel repeatedly alleged at trial that the Respondents had engaged in a massive fraud and conspiracy, which caused him to suffer a tremendous economic loss. Yet, it is absolutely unexplainable that Mr. Kobel also testified that he continued to use Respondent International TLC for several new

and unrelated shipments many months after he know of the so-called "fraud" and the "loss" of his cargo. See International trial exhibits #59, 60,61,62,63 and 64. The lack of merit of Mr. Kobel's case is obvious and the credibility of Mr. Kobel is nonexistent. The criminal conviction of his partner Mr. Berkovich for an unrelated fraud based on the forgery of documents only further supports the Administrative Law Judge's findings that the arguments of Complainants attorney cannot alter the facts that his witnesses were not credible.

POINT THREE: THE SHIPPING ACT

As to the first specific allegations by the Complainant against Limco is that they violated Section 10(d)(1) of the Shipping Act, 46 USC Section 41102(c) by changing the names of the shipper from the Complainants to Mr. Remishevsky. Limco was at all times licensed and bonded by the Federal Maritime Commission and was operating lawfully as a non-vessel operating common carrier. See finding of fact number 3.

There is no question that Limco changed the shipper/consignee on its bills of lading after the cargo had been sold to a third party by International TLC. Finding of fact #118 states that:

"International TLC notified Limco via email on March 2, 2009 to issue a change to bill of lading LIM16090 for container MOGU2002520, bill of lading LIM16802 for container MOGU0251660. And bill of lading LIM16803 for container MOGU21-1987 to change the listed exporter and consignee on each Limco bill of lading from Victor Berkovich to Olel Remishevsky. Undisputed fact number 27"

The only issue in dispute is whether Limco acted properly or not in

effectuating these changes to their bills of lading. Judge Wirth concluded at page 31 of the initial decision that:

“Limco changed the shipper on the bills of lading at the direction of International TLC after the containers were sold to a third party”. F. 118-119. There is no evidence that Limco knew that the containers had been liquidated by International TLC or that Limco acted unreasonably in handling any of these containers. Under these facts, Complainants have not demonstrated an unreasonable practice or procedure” (as to Limco)

The argument of the attorney for Complainants is not a substitute for evidence that any willful and knowing violations on behalf of Limco took place. Complainants presented no credible evidence to support their claim that Limco had violated Section 10(d)(1) and the Judge promptly denied that Cause of Action.

The Complainants also alleged that Limco Violated the Shipping Act Section 10(b)(4)(E), 46 USC 4110(4)(E) and 46 USC 41104(10) by refusing to deal, negotiate or settle Complainants’ claim for damages. The Administrative Law Judge concluded at page 32 of the initial decision:

“The evidence shows that Limco promptly conveyed Complainants concerns to Hapag-Lloyd and conveyed Hapag-Lloyds position to Complainants. It was complainants unreasonable demands, not Limco’s actions, which hindered reaching a mutually agreeable resolution. There was no evidence that Limco failed to communicate or withheld any information. Accordingly, the evidence does not support a finding that Limco refused to deal, negotiate or settle Complainants’ claim for damages”.

The arguments of Complainants attorney are not a substitute for evidence at trial of a violation of the Shipping Act. Simply put, the Complainant failed to present any credible evidence that any such violation of the Shipping Act had occurred and therefore the Judge promptly denied and dismissed that Cause of Action against Limco Logistics.

The Complainants are no longer pursuing their claim that Limco violated Shipping Act section 10(b)(11) alleging that Limco had dealt with an unlicensed freight forwarder.

CONCLUSION

As set forth in Limco's post trial memorandum, the Complainants have presented a textbook example of how not to make an international shipment. The Complainants had no prior experience in making international shipments. See finding of fact number 12. The Complainants lacked a realistic plan for a purchase, transport and resale of the subject cargo. They violated a fundamental principal in the conducting of any international business by failing to have a written valid and enforceable contract for the resale of the subject goods when they reached their destination. See finding of fact number 135. The Complainants also failed to recognize the shipping costs involved and failed to have adequate financing to complete the transaction. The Complainants acknowledged buying goods at their full retail price. See finding of fact number 131. It defies logic and economic sense that anyone can buy goods at full retail price, add to it the significant costs in making a lengthy overseas shipment, combined with the inland transportation costs, and still expect to make an additional profit above those costs. This explains why the goods remain unsold at their destination in the Ukraine. See finding of fact number 34. The entire shipment was doomed to failure, as the Complainants did not even know of the import rules and regulations governing the import of oil into the Ukraine. See finding of fact number 134. The Complainants bizarre plan, lack of experience and lack of finances do not equate to a Shipping Act violation by any of

the Respondents.

The Administrative Law Judge promptly determined that there was no "loss of cargo" and no violation of any provision of the Shipping Act By Limco or any other Respondent. The Presiding Officers findings of fact are well documented and undisputable. The conclusions of law based on those facts where well reasoned and grounded in law.

Respectfully submitted



RONALD SAFFNER
Attorney for Respondent
Limco Logistics Inc.
110 Wall Street, 11th Floor
New York, NY 10005
212-619-6030

Dated: New York, NY
March 28, 2012

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF NEW YORK

Robyn Saffner, being duly sworn, deposes and says as follows;

I am over the age of 18 years and reside in Hudson County, New Jersey.

On the 2nd day of April 2012, I served the within Reply to Complainants Objections
by mailing a copy thereof to the following persons at the following address

Donald Roach
Attorney for Complainants
3718 SW Condor, Suite 110
Portland, OR 97239

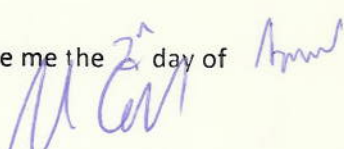
Cozen and O'Connor
Attorney for Hapasg-Lloyd
1627 I Street, Suite 1100
Washington, DC 20006

International TLC
Respondent pro se
PO Box 1447
Summer, WA 98390



ROBYN SAFFNER

Sworn to before me the 2nd day of April 2012.


REMYAL SAFFNER
Notary Public, State of New York
No. 41-4844361
Qualified in Queens County
Commission Expires March 20, 2014